

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the Regulation of Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION

On December 22, 2005, pursuant to Rule 45 of the Commission's Rules of Practice and Procedure, Cox California Telcom, LLC and Time Warner Telecom of California, LP (collectively, Cox/TWTC or the movants) filed a motion for clarification and modification of the December 16, 2005 ruling¹ issued in this proceeding. They seek clarification on what issues will be addressed in the briefs due to be filed in March 2006, and request that the scheduled number of hearing days on the limited issue of competition analysis be expanded from three days to five.

Cox/TWTC state that contrary to its title promising the "remainder of the Phase I schedule," the Ruling not only addresses the single question of how to analyze competition but also sets hearings that are "limited to competition analysis." There are no further types of 'scoping' or 'scheduling' issues discussed in the Ruling, nor is there any explanation of the subject of the briefs that are to be filed on March 3 and March 17. Movants ask whether the March

¹ "Ruling of Assigned Commissioner, Commission President, and Administrative Law Judge Setting Hearing and Remainder of Phase I Schedule" (Ruling).

briefs are to be limited solely to the issues to be covered in the January/February 2006 hearings, or all of the Phase I issues that were originally to be addressed in briefs due earlier in 2005, including as well the issues of competition analysis that will be considered in the upcoming hearings. They maintain that the responses to these questions will enable the parties to better prepare for the hearings, as well as consider whether or not they should file additional testimony pursuant to footnote 3 of the ruling.

In response, Pacific Bell Telephone Company, doing business as SBC California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California Inc. (d/b/a Frontier Communications of California Inc.) contend that Cox/TWTC's pleading is unnecessary and irrelevant to the preparation for hearings or any determination on whether to submit additional pre-filed testimony. Moreover, none of the respondents see any need to modify the Ruling to expand the hearing schedule. The respondents do not object to there being "a confirmatory ruling regarding the permissible scope of the March briefs, if the Commission believes it would be helpful."²

² Response of Pacific Bell Telephone Company To Motion of Cox California Telcom, LLC and Time Warner Telecom of California, LP for Clarification and Modification of Ruling Setting Hearing and Remainder of Phase I Schedule (January 6, 2006); Response of Verizon California Inc. To Motion of Cox and Time Warner for Clarification, and Modification of December 16, 2005 Ruling of Assigned Commissioner, Commission President, and ALJ (January 6, 2006); Joint Response of SureWest Telephone and Citizens Telecommunications Company of California Inc. (d/b/a Frontier Communications of California) (January 6, 2006).

Discussion

Notwithstanding its imprecise title, the central purpose of the December 16, 2005 Ruling was to give parties in this docket notice that they would have an opportunity in late January/early February to test through evidentiary hearings, a narrow issue: the differences of interpretation of the data underlying the competition analyses in the September 2005 reply comments. The procedural schedule was revised only to the extent of notifying parties that the briefing and decision dates were moving forward. Cox/TWTC note that the Ruling did not reiterate that all the issues within the scope of Phase I would be addressed in the rescheduled briefs, they contend that it is unclear whether the March briefs will be limited to the competitive analysis issue. The opening and reply briefs in March will not be limited to the competitive analysis issue; they should address all the issues that the parties have discussed in the opening and reply comments filed in this rulemaking.³

With regard to Cox/TWTC's request that the number of evidentiary hearing days be expanded from three to five days prior to the start of the hearings, I am not persuaded that it is obvious that the present schedule is insufficient. Of course, in preparing for the hearings and utilizing the time in the hearing room, the parties are encouraged: (1) to coordinate with those who share a common interest to avoid duplicative cross-examination; and (2) to manage their allotted time efficiently and effectively. There is the possibility that even with tight time management and well-intentioned coordination, there may be a need to schedule some additional hours to conclude the hearings. If so, any

³ Except those issues that have been specifically declared to be beyond the scope of Phase I of this proceeding in prior scoping rulings.

additional hearing time will be scheduled on the record with all the parties. At this time, the Cox/TWTC request for two additional hearing days is denied.

Therefore, **IT IS RULED** that:

1. The March Opening and Reply briefs in Rulemaking 05-04-005 will not be limited to the competitive analysis issue; they should address all the issues that the parties have discussed in the opening and reply comments filed in this proceeding.

2. At this time, the Cox/TWTC request for two additional hearing days is denied.

Dated January 18, 2006, at San Francisco, California.

/s/ JACQUELINE A. REED

Jacqueline A. Reed
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Motion on all parties of record in this proceeding or their attorneys of record.

Dated January 18, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.